

*UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK (Brooklyn)*

=====:  
:  
**ESTHER REIZES and YOSEF LOWENBEIN** :  
**On behalf of themselves and all other** :  
**Similarly situated consumers** :  
: **1:12-cv-03361 (JBW)(VVP)**  
Plaintiffs :  
:  
vs. : **PRESSLER & PRESSLER'S**  
**PRESSLER & PRESSLER, LLP** : **ANSWER & AFFIRMATIVE**  
: **DEFENSES**  
Defendant :  
:  
=====:

**Defendant, Pressler & Pressler, LLP** (“Pressler” and or “Defendant”) by way of answer to Plaintiffs’ complaint (the “Complaint”) says:

**INTRODUCTION**

1. Defendant denies all allegations which may have been made against it. As to those allegations regarding actions taken by Plaintiffs or other third parties, Defendant is without information or belief and leaves Plaintiff to his proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**PARTIES**

2. Defendant neither admits nor denies this paragraph which makes allegations regarding Plaintiffs’ status and domicile and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

3. Defendant neither admits nor denies this paragraph which makes allegations regarding Plaintiffs' status and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

4. Defendant neither admits nor denies this paragraph which makes allegations regarding the alleged debt and it's "status" and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

5. Admitted to the extent that Pressler is a law firm with its principal office in Parsippany, New Jersey with additional offices in New York and Pennsylvania and its sole business is to provide legal representation to its clients. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Pressler refers all questions of law to the Court.

6. Admitted to the extent that Pressler is a law firm with its principal office in Parsippany, New Jersey with additional offices in New York and Pennsylvania and its sole business is to provide legal representation to its clients. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Pressler refers all questions of law to the Court.

7. Defendant neither admits nor denies this paragraph which makes allegations regarding Defendant's "legal status" at any given time and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**JURISDICTION**

8. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

9. Defendant denies the factual allegations contained within this paragraph. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**ALLEGATIONS PARTICULAR TO ESTHER REIZES AND YOSEF LOWENBEIN**

10. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

11. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

12. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

13. Due to the vagueness of this paragraph Defendant neither admits nor denies it and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

14. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

15. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

16. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

17. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

18. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

19. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

20. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

21. Due to the vagueness of this paragraph Defendant neither admits nor denies it and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

22. Due to the vagueness of this paragraph Defendant neither admits nor denies it and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

23. Due to the vagueness of this paragraph Defendant neither admits nor denies it and leaves Plaintiffs to their proofs. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

24. Defendant denies all factual allegations which may have been made against it.

25. Defendant denies all factual allegations which may have been made against it.

26. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

27. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

28. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

29. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

30. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

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35. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

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37. Defendant neither admits nor denies this paragraph which contains no factual allegations and consists solely of inappropriate general legal argument and characterizations as to the meaning of certain federal statutes. Defendant refers all questions of law to the Court to be argued and decided at the appropriate time.

38. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**AS AND FOR A FIRST CAUSE OF ACTION**

*Violations of the Fair Debt Collection Practices Act brought by Plaintiffs on behalf of themselves and the members of a class, as against the Defendant.*

39. Defendant repeats and incorporates by reference all responses made in the above paragraphs.

40. Defendant neither admits nor denies this paragraph which contains no factual allegations.

41. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

42. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

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***Violations of the Fair Debt Collection Practices Act***

49. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

50. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**WHEREFORE** Pressler, hereby requests dismissal of Plaintiffs' Complaint with costs and

attorney's fees as allowed under the Fair Debt Collection Practices Act 15 U.S.C. §1692k (a)(3) or otherwise by statute or rule of court.

**AS AND FOR A SECOND CAUSE OF ACTION**  
*Violations of the Telephone Consumer Protection Act brought by Plaintiff, Esther Reizes*

51. Defendant repeats and incorporates by reference all responses made in the above paragraphs.

52. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

53. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

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56. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

57. Defendant denies all factual allegations which may have been made against it. As to those allegations which contain legal arguments and call for determinations of law, they are denied as such and Defendant refers all questions of law to the Court.

**WHEREFORE** Pressler, hereby requests dismissal of Plaintiffs' Complaint with costs and attorney's fees as allowed under the Fair Debt Collection Practices Act 15 U.S.C. §1692k (a)(3) or otherwise by statute or rule of court.

**SEPARATE DEFENSES**

1. Plaintiffs fail to state a claim under State or Federal Statutory Law.
2. Plaintiffs fail to states a claim for which relief may be sought.
3. Any damages allegedly sustained by Plaintiffs were a result of actions by 3<sup>rd</sup> parties over whom Defendant had no dominion or control. Without limitation see Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6)(C).
4. Any damages allegedly sustained by Plaintiffs were the result of the negligence or wrongdoing of the Plaintiffs, which negligence or wrongdoing exceeded any alleged wrongdoing of Defendant.
5. The claims of the Plaintiffs relating to events prior to July 6, 2011 are barred by the one year statute of limitations as a matter of law under the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. §1692k(d).and the Telephone Consumer Protection Act ("TCPA") 47 U.S.C. § 227(c)5
6. Defendant violated no duty owed to the Plaintiffs.
7. Defendant reserves the right to amend this answering pleading following the receipt of discovery.
8. Defendant complied with all applicable statutes regarding the collection of the underlying debts.
9. By their own actions and otherwise the Plaintiffs herein are not entitled to equitable relief.

10. Plaintiffs failed to take the pre-requisite steps necessary to make a claim under the FDCPA, 15 U.S.C.A. §1692 et seq.
11. Defendant made no material misrepresentations.
12. The FDCPA, 15 U.S.C.A. §1692 et seq. does not provide for private injunctive relief.
13. Plaintiffs did not rely on any representation made by Defendant.
14. To the extent Plaintiffs claims to or did in fact rely upon any representations by Defendant such reliance was unjustified.
15. Defendant denies the injuries and damages allegedly sustained by Plaintiffs resulted from any actions by Defendant.
16. Plaintiffs claims are unique to Plaintiffs and therefore are not subject to a class action.
17. Plaintiffs are not entitled to punitive damages as a matter of law under the FDCPA, 15 U.S.C.A. §1692 et seq. or otherwise generally.
18. Plaintiffs have suffered no damages arising from the acts of Defendant.
19. The Complaint does not describe the claims made against this Defendant with sufficient particularity to enable it to determine what defenses may apply in response to Plaintiffs' claims. The Defendant therefore reserves the right to assert all defenses which may be pertinent once the precise nature of the claims at issue is ascertained through discovery.
20. In the event that plaintiffs are able to adequately plead a violation of the FDCPA, their entitlement to statutory damages is capped at \$1,000 per action, not per violation. See Dowling v. Kucker Kraus & Bruh, LLP, 2005 U.S. Dist. LEXIS 1100 (S.D.N.Y. 2005); Ganske v. Checkrite Limited, 1997 U.S. Dist. LEXIS 4345 (D. Wis. 1997); Wright v. Finance Service of Norwalk, Inc., 22 F. 3d 647 (6th Cir. 1994); Harper v. Better Business Services, Inc., 961 F.2d 1561 (11th cir. 1992); Donahue v. NFS, Inc., 781 F. Supp. 188 (W.D.N.Y. 1991); Wiener v.

Bloomfield, 901 F. Supp. 771 (S.D.N.Y. 1995); and Teng v. Metropolitan Retail Recovery, 851 F. Supp. 61 (E.D.N.Y. 1994).

21. Plaintiffs' claims under Telephone Consumer Protection Act ("TCPA") 47 U.S.C. § 227(c)5 are jurisdictionally infirm.

22. Defendant asserts on information and belief that Plaintiffs' claims were brought in bad faith and for the purposes of harassment and to obtain advantage in the action against Plaintiffs in the matters entitled Midland Funding LLC Dba In New York as Midland Funding of Delaware LLC, vs Esther Reizes, Index no. 7842-09, venued in the Civil Court of the City of New York, Kings County and Midland Funding LLC Dba In New York as Midland Funding of Delaware LLC, vs Yosef Y Lowenbein, Index no. 09-11636, venued in the Civil Court of the City of New York, Kings County and and Defendant requests an award of attorneys fees and costs pursuant to 15 U.S.C.A. §1962k(a)(3) and Sanctions pursuant to FRCP 11.

Dated: October 4, 2012  
New York, New York

s/Mitchell L Williamson  
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